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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 96-1014

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 95-46
Table of Allotments,) RM-8594
FM Broadcast Stations.)
(Edenton, Columbia and Pine Knoll)
Shores, North Carolina))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 21, 1996

; Released: June 28, 1996

By the Chief, Allocations Branch:

1. At the request of Lawrence F. and Margaret A. Loesch ("petitioners"), the Commission has before it the Notice of Proposed Rule Making ("Notice"), 10 FCC Rcd 4368 (1995), proposing the substitution of Channel 273C1 for Channel 273C2 at Edenton, North Carolina, the reallocation of Channel 273C1 to Columbia, North Carolina, as the community's second local FM service, and the modification of Station WERX-FM's license to specify Columbia as the station's community of license. To accommodate the allotment of Channel 273C1 at Columbia, the Notice also proposed the substitution of Channel 290A for vacant but applied-for Channel 272A at Pine Knoll Shores, North Carolina. Comments were filed by the petitioner and by Atlantic Ridge Telecasters, Inc.² Reply comments were filed by the petitioner.

2. In the Notice, we set forth petitioners' argument that the public interest would be served by granting the proposed allotment at Columbia since it could enable Station WERX-FM to provide 60 dBu service to an additional 28,299 persons without depriving Edenton of its sole local service. Further, we recognized that Columbia and Edenton are each the seat of their

¹ By Memorandum Opinion and Order in MM Docket 88-40, the Commission deleted Channel 272A from Pine Knoll Shores, without replacement, based upon a determination that no transmitter site existed which would enable a station to provide the entire community with the required city-grade signal and the only transmitter site which would comply with the Commission's mileage separation requirements was unavailable due to environmental restrictions. See 10 FCC Rcd 13159. In addition, on October 5, 1995, the Audio Services Division dismissed the sole application for the Channel 272A allotment at Pine Knoll Shores (BPH-920720MA).

² The comments of Atlantic Ridge Telecasters and a portion of petitioners' reply comments are directed to the allotment at Pine Knoll Shores. In view of the deletion of the channel, as discussed in fn. 1, supra, these comments are now moot and will not be discussed.

respective counties. However, we also noted that the reallocation of Channel 273C1 to Columbia would leave the substantially larger community of Edenton with only one local nighttime service. Therefore, to enable the staff to more properly evaluate the proposal, petitioner was requested to submit information showing the areas and populations which would receive new service and the areas and population which would lose existing service, as well as any other information as to the overall public interest benefits that would accrue from a grant of petitioners' proposal.

3. In response, petitioners contend that there will be no loss of service to any of the 91,878 persons presently receiving service from Station WERX-FM because they intend to apply for the channel at the station's presently licensed transmitter site, which is 8.8 kilometers northwest of Columbia. They acknowledge that in order to comply with the Commission's minimum mileage separation requirements as set forth in Section 73.207 of the Commission's Rules, the allotment of Channel 273C1 to Columbia would require a site restriction of 24.7 kilometers (15.3 miles) southeast to avoid short-spacings to Stations WOLC, Channel 273B, Princess, MD, and WHLQ, Channel 273A, Louisburg, NC. However, they state that they intend to apply for Channel 273C1 at Station WERX-FM's presently licensed transmitter site, using the provisions set forth in Section 73.215, Contour Protection for Short-Spaced Assignments.³ Thus, they submit that the substitution of Channel 273C1 for Channel 273C2 at Edenton and its reallocation to Columbia will enable Station WERX-FM to provide service to an additional 30,640 persons within a 2,802 square kilometer area with no loss of service being experienced by anyone presently receiving the station's signal. Petitioners also reiterate their intention to apply for and construct the new facilities if their proposal is granted.

Discussion

4. We have carefully reviewed the record before us and find that the substitution of Channel 273C1 for Channel 273C2 at Edenton and the reallocation of Channel 273C1 to Columbia would result in a preferential arrangement of allotments. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part, ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Under the procedures set forth in Change of Community R&O and MO&O, we compared the existing and proposed arrangement of allotments using our FM allotment priorities.⁴

³ Section 73.215 permits an applicant for commercial FM facilities to request an authorization of a transmitter site that would be nominally short-spaced to the facilities of other co-channel or adjacent channel stations, provided the service of those other licensees is protected from interference based on contour protection as outlined in the rule section. The necessary protection may be afforded by taking advantage of terrain elevation in the direction of the short-spaced station, by an appropriate reduction in operating facilities (power and/or height), by use of a directional antenna, or by any combination of these means.

⁴ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

5. To enable the staff to more completely analyze the petitioners' request, the staff conducted its own gain and loss studies based on use of the proposed reference coordinates set forth in the Notice. The staff study shows that the relocation of Station WERX-FM to Columbia, at a transmitter site meeting the spacing requirements set forth in Section 73.207, will result in an additional 41,311 persons within a 4,915 kilometer area receiving service from Station WERX-FM and 11,103 persons within an area of 963 square kilometers losing service from the station, for a net gain of 30,208 persons within a 3,952 square kilometer area. All of the population within the loss area will continue to receive at least five full-time services. Within the gain area, a Channel 273C1 station at Columbia would provide a second fulltime aural service to 1,292 persons within a 64 square kilometer area, thus fulfilling the second highest allotment priority. In addition, a third such fulltime aural service would be provided to 713 persons within a 25 square kilometer area. We recognize that the petitioners have stated that it is their present intention to apply for Channel 273C1 at Station WERX-FM's existing transmitter site by utilizing the provisions of Section 73.215 of the Commission's Rules. Further, we note that if Station WERX-FM does not relocate its transmitter, this second and third fulltime aural service will not be provided. Nevertheless, we are crediting petitioners' proposal with the provision of a second fulltime service. At the rule making stage, we presume that all channels will be applied for at transmitter sites which are fully spaced to all other stations and allotments. In addition, while they may intend to utilize their present transmitter site by applying for the channel under the provisions of Section 73.215 of the Rules, there is no way of determining, with certainty, that their present intention will prevail. Therefore, in light of the fact that Station WERX-FM must change its community of license in order to upgrade to Channel 273C1 because the Class C1 channel cannot be allotted to Edenton in compliance with the Commission's minimum distance separation requirements and there is a possibility that almost 1,300 people will receive a second fulltime aural service, we find that the public interest would be served by granting the petitioners' request.

6. We are aware that the reallocation of Channel 273C1 to Columbia would result in the loss of a transmission service at Edenton, the larger of the two communities. However, while we are concerned about the loss of a transmission service at Edenton, we believe this loss is mitigated by the fact that the community will not only continue to receive reception service from Station WERX-FM, whether or not it relocates its antenna, but that the community will continue to receive local transmission service from two aural stations, one FM and one AM. Therefore, while we are concerned with the loss of a transmission service which the residents of Edenton have come to rely on, we believe that this loss is lessened by the fact that two stations remain licensed to serve the unique needs of the community.

7. Finally, we would like to remind petitioners that channel allotments granted pursuant to a rule making proceeding are based upon compliance with the Commission's minimum distance separation requirements as set forth in Section 73.207 of the Rules. The use of Section 73.215 of the Commission's Rules is permissible only at the application stage. Therefore, even though a petitioner might state that it intends to utilize the provisions of Section 73.215 to apply for the channel at a site not meeting the spacing requirements, the Commission, at the rule making stage, requires that the channel allotment meet the minimum distance separation

requirements set forth in Section 73.207 of the Rules and assumes that the application for a construction permit will specify a fully-spaced site. Therefore, all gain and loss studies should be conducted assuming such fully-spaced sites.

Technical Summary

8. Channel 273C1 can be allotted to Columbia in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.7 kilometers (15.3 miles) south-southeast to avoid short-spacings to Stations WOLC, Channel 273B, Princess, MD and WHLQ, Channel 273A, Louisburg, NC.⁵

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 12, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Columbia, North Carolina	289C1, 273C1
Edenton, North Carolina	261C2

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Lawrence F. and Margaret A. Loesch for Station WERX-FM, IS MODIFIED to specify operation on Channel 273C1, in lieu of Channel 273C2, and to specify Columbia, North Carolina, in lieu of Edenton, North Carolina, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application

⁵ The coordinates for Channel 273C1 at Columbia are 35-42-48 North Latitude and 76-08-34 West Longitude.

FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Lawrence F. and Margaret A. Loesch, licensees of Station WERX-FM, are required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau